EXPLANATORY MEMORANDUM TO

THE YOUTH JUSTICE BOARD FOR ENGLAND AND WALES (AMENDMENT) ORDER 2008

2008 No. Draft

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The draft Youth Justice Board for England and Wales (Amendment) Order 2008 ("the draft Order"), if approved by Parliament, would enable the Youth Justice Board for England and Wales ("the Board") to exercise, concurrently with the Secretary of State, some of the Secretary of State's functions in relation to the youth justice system.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Board was established by virtue of section 41 of the Crime and Disorder Act 1998 (c.37). Section 41(5) of that Act sets out the functions of the Board. Section 41(6) provides that the Secretary of State may by Order (a) amend section 41(5) to add to, subtract from or alter any of the functions of the Board or (b) provide that any function of his which is exercisable in relation to the youth justice system shall be exercisable concurrently with the Board.

4.2 The powers in section 41(6) of the Crime and Disorder Act 1998 were exercised in the Youth Justice Board for England and Wales Order 2000 (SI No.1160) ("the 2000 Order") which extended the functions of the Board and gave it powers to exercise certain functions concurrently with the Secretary of State, mainly in relation to the secure estate for children and young people.

4.3 Article 2(2) and 2(3)(a) and (b) of the draft Order update legislative references in the 2000 Order on sentencing to those currently in force. Article 2(3)(c) of the draft Order adds to the functions which the Board may exercise concurrently with the Secretary of State. In particular it gives the YJB the power to exercise the following functions concurrently with the Secretary of State:

- the placement of persons aged under 18 who have been sentenced to be detained at Her Majesty's Pleasure or for a period of long term detention;
- additional powers under the Secure Training Centre Rules 1998;
- the power to enter into contracts for the provision and running of young offender institutions and related powers connected with the running of such establishments, including, where such a contract has been entered into, under the Young Offender Institution Rules 2000; and
- the power, where a person under 17 is remanded or committed to local authority accommodation and a security requirement is imposed, to consent to the person being detained in a secure training centre.

4.4 Article 3 of the draft Order makes a consequential change to the Young Offender Institution Rules 2000. It would allow, where the Board have entered into a contract for the provision or running or both of a young offender institution for persons under 18, for the director of that establishment to make a disclosure of certain information to an officer of the Board.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minster of State, Ministry of Justice, has made the following statement regarding Human Rights:

In my view the provisions of the Youth Justice Board for England and Wales (Amendment) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 In April 2000, the Board assumed responsibility for commissioning and purchasing places in custodial establishments for young people under 18. To enable the Board to fulfil this new role, the 2000 Order specified a number of functions of the Secretary of State which the Board was authorised to exercise concurrently with the Secretary of State. These included power to enter into contracts for the provision and running of secure training centres.

7.2 In addition to secure training centres, the secure estate for children and young people comprises young offender institutions and secure children's homes. While most young offender institutions are run by the Prison Service on behalf of the Secretary of State, Her Majesty's

Young Offender Institution Ashfield is provided and run under contract by a private company. The contract is currently managed by the National Offender Management Service on behalf of the Secretary of State, but since Ashfield is an establishment exclusively for young people under 18 (and those who reach 18 in the course of their sentences), it would be more appropriate for management of the contract to transfer to the Board. The draft Order would give the Board a concurrent power to enter into contracts for the provision and running of young offender institutions (similar to the power already available to it in relation to secure training centres, referred to above), together with other concurrent powers that it needs in order to exercise effective oversight of the running of a young offender institution.

7.3 The provision and running of another young offender institution (Her Majesty's Young Offender Institution Parc) is also contracted out. However, as the (separate) under-18 accommodation at Parc forms part of a larger establishment, which also accommodates older inmates, it would not currently be appropriate to give the Board contract responsibility. (The Board does, however, work closely with the National Offender Management Service on matters relating to the under-18 establishment at Parc.) The Board may of course use the new concurrent power to enter into new contracts for the provision and running of a young offender institution in the future.

7.4 The draft Order would also give the Board other concurrent powers (mentioned in paragraph 4 above), which the Board is best placed to exercise, in relation to the secure estate for children and young people.

8. Consultation outcome

8.1 As the changes made by the Order are internal administrative ones, there were no issues requiring public consultation.

9. Guidance

9.1 The Ministry of Justice works closely with the Board in relation to the running of the secure estate for children and young people. We are not planning to issue formal guidance on the Order.

10. Impact

10.1 There is no impact on charities or voluntary bodies. The effect on business is that contracts for the provision and running of young offender institutions may in future be managed by the Board. However, the practical effect of that change is not significant in terms of burdens on business.

10.2 The impact on the public sector is limited to the Ministry of Justice and the Board.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The effect of the Order, if approved, would be monitored as part of the general oversight exercised by the Ministry of Justice and Department for Children, Schools and Families of the Board's responsibilities in relation to the secure estate for children and young people.

13. Contact

13.1 Richard Hughes, Joint Youth Justice Unit (Ministry of Justice/ Department for Children, Schools and Families), tel: 0207 340 7789 or email: Richard3.Hughes@dcsf.gsi.gov.uk can answer any queries regarding the instrument.